Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

KENNETH S. G. LEE

Petitioner

v.

STATE OF HAWAII

On Petition For Writ Of Certiorari
To The Supreme Court Of The State of Hawaii

PETITION FOR WRIT OF CERTIORARI

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4288

QUESTIONS PRESENTED

When a constitution grants a people a right of redress, here the 1840 Kingdom of Hawaii Constitution, and subsequent legislation and judicial decisions establish a right of recovery for tort injuries, which right is continued by all governmental entities subsequent to the Kingdom of Hawaii to and including the State of Hawaii, is the state no fault law with its abolition of tort liability then void and invalid as to petitioner and native Hawaiians as it is a taking of his right of redress guaranteed by the 1840 Constitution and is thereby contrary to and prohibited by the due process of law requirements of the 14th amendment of the U.S. Constitution?

When state statutes require citation of both driver and registered owner upon the same traffic ticket for no-fault insurance violations, and at petitioners trial 1) the traffic citation is not introduced into evidence 2) petitioner is not identified as a driver only or registered owner 3) petitioner is not identified as the recipient of a no-fault citation and the Supreme Court of the State of Hawaii affirms the conviction rendered by the trial court, is the ruling by the State Supreme Court a State of Hawaii violation of petitioner's U.S. Constitution 14th amendment right to due process of law?

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

No. ____

KENNETH S .G. LEE,

Petitioner,

v.

STATE OF HAWAII,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of the State of Hawaii

PETITION FOR WRIT OF CERTIORARI

Kenneth S. G. Lee respectively petitions for a Writ of Certiorari to review the judgment of the Supreme Court of the State of Hawaii.

OPINIONS BELOW

State of Hawaii v. Lee, S.C No. 21220 (February 8, 1999). (Appendix B).

JURISDICTION

The judgment of the Supreme Court of the State of Hawaii affirming the judgment of the trial court was entered on March 8, 1997. The jurisdiction of this court is invoked under 28 U.S. C. Sec. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent parts of all constitutional and statutory provisions are quoted ver batim in the REASONS WHY THE PETITION SHOULD BE GRANTED portion of the petition.

STATEMENT OF THE CASE

The original proceeding resulted in petitioners conviction for a state of Hawaii no fault insurance traffic violation rendered by the trial court. Petitioner appeared pro se.

At trial petitioner asserted the invalidity of the Hawaii Motor Vehicle Insurance Law "No-Fault" as applied to the native Hawaiian people, that prior to No-Fault each native Hawaiian has the right to recovery for automobile injuries and that with No Fault this right to recover for tort injuries no longer exists. Petitioner then stated that No Fault has taken away his right to sue.

Petitioner then provided the court with a copy of Public Law 103-105,107 Stat. 1518 which was admitted into evidence. [R. TR. 11-10-1997, p. 8 lines 1-11]

Petitioner also asserted that the state did not notify the native Hawaiian people and then stated Article III of the 1840 Kingdom of Hawaii Constitution to the court:

> MR. LEE: Well I think what -- what's in there is that the State is a trustee for the Hawaiian people. That we are guaranteed certain rights of usage and gathering rights. And the State has fiduciary duty to, ah -- to protect us, to defend us.
>
> And also, when the State created the no-fault law they were obligated by this constitution to notify the Hawaiian people that they're going to change that law. That's what's in the -- that's what's in that constitution. And nobody can change it--
>
> THE COURT: You mentioned -- you mentioned earlier in the statement that you're reading some right that you said you used to have that isn't there any more. The right that you're referring to is a right that existed after the overthrow of the Monarchy?
>
> MR. LEE: After the overthrow and prior to no-fault.

THE COURT: Yeah, what right is that? That's the one I missed. Which right are you referring to?

MR. LEE: Okay, Article Three of the Constitution, which is part of the Bill of Rights. The law shall give redress to any man who is injured by another without a fault of his own and shall protect all men while they conduct properly, and shall punish all men who commit crime against the kingdom or against individuals, and no unequal law shall be passed for the benefit of one to the injury of another.

Petitioner then raised his right of travel by roadways which are upon ceded land:

MR. LEE: That's only one point. The other point is, as far as I'm concerned the Constitution of 1840 has been breached by the State of Hawaii in that I should be allowed to try -- traverse the roads because most of them are unceded land.

And the State of Hawaii, if they want me to have insurance, they should be providing that insurance for me. That's how I see this.

At the conclusion of the trial, the judge found petitioner guilty. A Motion for Reconsideration or New Trial was filed on November 19, 1997 and a hearing was held on December 5, 1997. At the hearing, petitioner inquired as to the jurisdictional authority of the court:

THE DEFENDANT: You cannot, uh, make a decision whether or not it's constitutional or unconstitutional?

THE COURT: That I can do. But what I'm saying is --

THE DEFENDANT: -- that's what I'm saying --

THE COURT: -- right. Okay. But what I'm saying is that as far as the issue of whether it's constitutional or not, the additional material that you would want to add wouldn't have any effect on my changing the decision.

THE DEFENDANT: I don't see why not. I can't understand why not. If it's unconstitutional it shouldn't even be --

THE COURT: -- but it's not unconstitutional.

THE DEFENDANT: Taking away the right is.

THE COURT: Pardon?

THE DEFENDANT: Taking away people's rights is.

THE COURT: No, the -- there are numerous cases dealing with the issue of the right of travel. The -- the argument was made, gee, before I went to law school. That was like -- I went law school like 30 years ago. When I went to law school, that was a settled law already. Somebody had tried that long time ago. Maybe the first guy who drove a car. I don't know. Maybe the first time they put up a stop sign in town. But it's many, many years ago, even before sovereignty came up.

Somebody challenged that concept and said that everybody has -- because there is language in the constitution that talks about free right of travel. So if the -- if the congress, for instance, said that you couldn't go to California unless you got a Federal license or something, that would be unconstitutional. But the reasonable regulation of traffic doesn't --

THE COURT: So you recognize that if somebody goes around and say, hey that Mr. Lee is a crook and he's a pervert and he -- uh, whatever. You can sue him.

THE DEFENDANT: Right.

THE COURT: And the guy cannot say free speech. In the old case, they say you cannot go into a theater and just for the hell of it yell fire just because it's good fun and everybody tried to get out and people get -- get trampled and killed.

So even though there's free speech, you can regulate it. So even though there is a right to travel, the government can have reasonable regulation.

Petitioner's motion was denied. Petitioner appealed the trial court's decision to the Hawaii Supreme Court on December 9, 1997. This appellate court by its opinion of February 8, 1999 and order affirming judgment of March 8, 1999 affirmed the trial court's decision. This petition for certiorari is from the appellate court's affirmation of judgment.

Petitioners is asserting for the first time that the decision in State v. Lee, unreported, is state action depriving him of and confiscating rights he has which are protected by the 14th Amendment of the U.S. Constitution; his specific right claimed here is the right of redress granted to the Hawaiian people by the 1840 Constitution of the Kingdom of Hawaii.

REASONS FOR GRANTING THE WRIT

Petitioner timely and properly raised a federal question at the time of the trial, on November 10, 1997 and at the hearing for his Motion For Reconsideration or New Trial held on December 5, 1997.

The Trial Court's statement at the hearing of December 5, 1997, quoted in the STATEMENT shown by the court's own words, including reference to free speech and the fire case Schenck v. U.S., Baer v. U.S. 249 U.S. 47, that petitioner has raised a federal question.

1) The 1840 Kingdom of Hawaii Constitution granted a right of redress for tort injury to the Hawaiian people. Article III thereof states:

"III. The law shall give redress to every man who is injured by another without a fault of his own,

> and shall protect all men while they conduct properly, and shall punish all men who commit crime against the kingdom or against individuals, and no unequal law shall be passed for the benefit of one to the injury of another." [Thurston, Fundamental Law of Hawaii 2].

2) The Article III constitutional principle is made a vested constitutional right by legislation. Civil Code of the Hawaiian Islands 1859, chapter III, Sec. 14.

3) Native Hawaiian people have exercised this right of redress and have sought and recovered damages granted by the Hawaiian Judiciary. The court in Kake v. Horton 2 Hawaii 209 (1860) at page 212 states:

> "It is provided in the 14th section of the Civil Code, which forms a part of the Chapter on the Construction of Laws, that in all civil matters where there is no express law, . . . natural justice are clearly in favor of permitting an action to be maintained, upon the grounds relied upon in this case, and upon a resort, for light, to the laws of those countries, to whose authority and opinions we yield the highest veneration, we find that the old harsh rule, which had its origins in feudal times, has been superseded by liberal statutory provisions, more in accordance with justice an with the sentiments and circumstances of an enlightened age." . . . and at page 213 "The principle which we now recognize will become, by judicial adoption, a valuable part of the Common Law of this Kingdom."

4) Section 1109 of the Civil Laws of the Hawaiian Islands (Republic of Hawaii) is a literal continuation of Chapter LVII Sec. 5 of the Laws Of Her Majesty Liliuokalani Queen of the Hawaiian Islands passed by the legislative assembly at its session 1892, Sec. 1109 states:

"Sec. 1109. The common law of England, as ascertained by English and American decisions, is hereby declared to be the common law of the Hawaiian Islands in all cases, except as otherwise expressly provided by the Hawaiian Constitution or laws, or fixed by Hawaiian judicial president, or established by Hawaiian national usage, provided, however, that no person shall be subject to criminal proceedings except as provided by the Hawaii laws."

5) The Organic Act 31 Sts. at, L. 141, c. 339 (2 Supp. R.S. 1141). continued the Republic of Hawaii Section 1109. Section 1 states:

"Sec. 1. Definitions. That the phrase "the laws of Hawaii," as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawaii, in force on the twelfth day of August, eighteen hundred and ninety-eight, at the time of the transfer of the sovereignty of the Hawaiian Islands to the United States of America.

The constitution and statute laws of the Republic of Hawaii then in force, set forth in a compilation made by Sidney M. Ballou under the authority of the legislature, and published in two volumes entitled "Civil Laws" and "Penal Laws," respectively, and in the Session Laws of the Legislature for the session of eighteen hundred and ninety-eight, are referred to in this Act as "Civil Laws," "Penal Law," and "Session Laws." [48 U.S.C.A. 493.]

The U.S. Circuit Court of Appeals, Ninth Circuit, in affirming the judgment of the U.S District Court for the District of Hawaii, in Kekauoha v. The Schooner Robert Lewers Co. 1 Estee 75; 114 Fed. 849 states:

> "Such judicial modification of the common law the legislature of Hawaii expressly sanctioned and ratified by section 1109 of Ballou's compilation of the laws of that country, which, as has been seen, was in turn ratified by section 1 of the act of congress of April 30 of 1900 ..."

6) By the Treaty of Annexation and the Organic Act, the native Hawaiian "right of redress" is protected by the provision of the constitution of the United State of America.

7) Chapter LVII Sec. 5 Kingdom of Hawaii, and Section 1109, Republic of Hawaii is today designated Hawaii Revised Statutes Section 1-1. The entire text of which is:

> "The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or of the State. [L 1892, c 57, Sec. 5; am L 1903, c 32, Sec. 2; RL 1925, Sec 1; RL 1935, Sec.1; RL 1945, Sec. 1; RL 1955, Sec. 1-1; HRS Sec. 1-1]"

8) The portion of the Motor Vehicle Insurance "No-Fault" law applicable here is HRS Sec. 431-10C-306, which reads in part as follows:

> "(a) Except as provided in subsection (b), this article abolishes tort liability..."

9) Petitioner maintains that the abolition of tort liability stated by the No-Fault law takes, invades, and abridges his native Hawaiian constitutional rights of redress.

10) Petitioner further maintains that his native Hawaiian constitutional right is today protected by the 14th amendment of the constitution of the United States of America which states in part:

> "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws

11) Petitioner further asserts that the federal question is timely and properly raised as shown by his trial court statements quoted in the STATEMENT OF THE CASE.

12) Petitioner also asserts for the first time here a federal question raised by affirmation of the trial court's decision by the Supreme Court of Hawaii.

13) The federal question first asserted here is that the opinion and judgment of the Supreme Court of Hawaii is state action which takes, invades, and abridges his right of redress protected by both his own Hawaiian constitutions and the Constitution of the United States of America. *Brinkerhoff-Faris Co. v. Hill, 281 U.S. 673*

14) By its opinion and judgment below the state supreme court has construed HRS Sec. 431:10C and HRS Sec. 805-13(b). HRS Sec. 805-13(b), in part, states:

> "(b) In all cases of citation for alleged violations of chapter 431:10C or section 286-116 the court shall require the appearance of the driver cited and the registered owner of the motor vehicle. If the registered owner is not the driver, the registered owner shall be cited by service of the citation on the driver who shall be deemed to be the owner's agent for purposes of service and by naming the owner jointly with the driver in the citation."

The court below has construed 805-13(b) contrary to:

(a) HRS Sec. 1-14 which states:

> "Sec. 1-14 **Words have usual meaning.** The words of a law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to their general or popular use or meaning. [CC1859, Sec 9; RL 1925, Sec. 9; RL 1935, Sec 10; RL 1945, Sec 9; RL 1955, Sec. 1-17; HRS Sec. 1-14]"

(b) HRS Sec. 701-114 which states:

> "Sec. 701-114. Proof beyond a reasonable doubt. (1) Except as otherwise provided in section 701-115, no person may be convicted of an offense unless the following are proved beyond a reasonable doubt:
>
> (a) Each element of the offense;
>
> (b) The state of mind required to establish each element of the offense;
>
> (c) Facts establishing jurisdiction;
>
> (d) Facts establishing venue; and
>
> (e) Facts establishing that the offense was committed within the time period specified in section 701-108.
>
> (2) In the absence of the proof required by subsection (1), the innocence of the defendant is presumed. [L 1972, c 9, pt of Sec. 1; am L 1973, c 136, Sec. 2 (a)]"

(c) The court in the proceeding entitled IN THE MATTER OF THE APPLICATION OF ALFRED W. CARTER, GUARDIAN OF THE PROPERTY OF ANNIE T.K. PARKER, A MINOR, FOR A WRIT OF PROHIBITION AGAINST THE HONORABLE GEORGE D. GEAR, SECOND JUDGE OF THE CIRCUIT COURT OF THE FIRST CIRCUIT, AT CHAMBERS, AND J.S. LOW, NEXT FRIEND OF ANNIE T.K. PARKER, A MINOR. 16 Hawaii 242 affirmed by the United States Supreme Court, 197 US 348. The states at page 245:

> "It is also a general rule of construction that when one state borrows a law from another state it also borrows the construction previously put upon it by the first state. Congress in the Organic Act not only adopted in general terms the laws of Hawaii, including those relative to the judiciary department, with certain exceptions (see 23 Op's Att'y Gen'l, 539), but it borrowed the provisions of the Organic Act itself relative to the fundamentals of the judiciary mainly from the Hawaiian Constitution of 1894, which were also in the Hawaiian Constitutions of 1852, 1864 and 1887."

(d) The court in Matson Terminal Inc. v. Hasegawa 54 Hawaii 563, 572 P.2d 1 (1973) which states at page 565:

> "We are of the opinion that the legislative wisdom or lack of wisdom is not a proper issue before the court. Neither can the court guess as the "probable" legislative intent when the words used in the statute are clear and unambiguous. The court cannot "question the probable legislative intent and construe the statute", which is clear on its face, and insert a meaning that the court, itself, believes is logical."

The court has construed HRS Sec. 805-13(b) and applied the statutes without overruling State v. Shamp. 86 Haw. App. 331, 949 P.2d 171 (1997) which requires police officers compliance as a due process procedural prima facie requirement for conviction for No-Fault violation, and State v. Bolosan, 78 Hawaii 86, 890 P.2d 673 (1995) which requires prima facie proof of non-insurance for conviction. The court stated:

"In the instant case, ... the state was required to prove beyond a reasonable doubt that Bolosan actually knew that the vehicle was un-insured."

(15) The police officers testimony, commencing with the stop, is as follows:

MR. UDOVIC: Q. Now the place that you stopped that person, what district was that in?
A. South Hilo.
Q. Ans where was that location?
A. On Keawe Street.
Q. And when you stopped that person did you ask him for identification?
A. Yes.
Q. And did he produce identification?
A. Yes, his driving license.
Q. And did you ask him for an insurance card?
A. Yes, I did.
Q. And was he able to produce the insurance card?
A. No.
Q. What was the circumstance of that conversation, if any?
A. Basically I stopped him for registration and safety check being expired, at which time I asked him for his insurance card. He said he didn't have one. And I then proceeded to issue him citations.
Q. And that's the extent of your contact with him on that day?
A. Yes.
MR. UDOVIC: Thank you.
I have nothing further at this time.
THE COURT: All right. Mr. Lee, you have any questions you want to ask the police officer regarding any testimony he has just given?
MR. LEE: No, your Honor.
THE COURT: All right. Thank you, Officer. You may step down.
State rests?
MR. UDOVIC: Yes. [R. TR. November 10, 1997 p. 4 lines 24-25, p. 5 lines 1-25, p. 6 lines 1-7]

From this testimony, the following is established:
There is:

a) No evidence to establish that the police presented a no-fault insurance ticket or citation, to petitioner.

b) No evidence identifying any vehicle. This is acknowledged by the appellate court below in State v. Lee at page 18a [Appendix B.]

c) No evidence identifying the registered owner of the vehicle described by b) above.

d) No evidence showing that the vehicle described by b) above is un-insured, as required by State v. Shamp 86 Haw. App. 331, 949 P.2d 171 and State v. Bolosan 78 Hawaii 86 (1995), 890 P.2d 673.

e) No evidence showing compliance or non compliance with the Shamp procedural requirements set forth by HRS 805-13(b). The traffic citation is not admitted into evidence.

f) No evidence identifying petitioner as the registered owner of the vehicle described by b) above.

g) No evidence of any event described by the judge at the hearing on petitioner's Motion For Reconsideration or New Trial held on December 5, 1997:

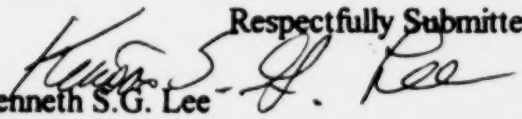
> THE COURT: . . ."So the police officer gets on, and the says he went to see you and you didn't produce the insurance, that's enough to establish a basic case."

The event described above is apparently the basis for convicting petitioner.

CONCLUSION

For the foregoing reasons, Petitioner respectfully urge his Petition for Writ of Certiorari be granted.

Respectfully Submitted,



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June 7, 1999

APPENDIX A

S. C. NO. 21220

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII,	) CITATION NO. 1619836MH
	)
PLAINTIFF-APPELLEE,	) APPEAL FROM THE
	) JUDGMENT ENTERED ON
	) NOVEMBER 10, 1997
	)
VS.	)
	) DISTRICT COURT OF THE
	) THIRD CIRCUIT, HILO
KENNETH S. G. LEE,	) DIVISION
	)
DEFENDANT-APPELLANT	) HONORABLE JEFFREY
	) CHOI
_____	)

NOTICE AND JUDGMENT ON APPEAL

TO: THE HONORABLE PRESIDING JUDGE OF THE DISTRICT COURT OF THE THIRD CIRCUIT, STATE OF HAWAII, HILO DIVISION

PLEASE TAKE NOTICE the following Judgment on Appeal is entered this day by the Supreme Court of the State of Hawaii:

Pursuant to the Opinion of the Supreme Court of the State of Hawaii, entered on February 8, 1999, the judgment of the District Court of the Third Circuit entered on November 10, 1997 is affirmed.

Dated: Honolulu, Hawaii, _____.

BY THE COURT:

_____

Clerk

Approved:

_____

(Justice/Judge)

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF HAWAII

—oOo—

STATE OF HAWAII, Plaintiff-Appellee, v. KENNETH S.G. LEE, Defendant-Appellant

NO. 21220

APPEAL FROM THE DISTRICT COURT
OF THE THIRD CIRCUIT,
HILO DIVISION

(CITATION NO. 1619836MH)

FEBRUARY 8, 1999

MOON, C.J., KLEIN, LEVISON, NAKAYAMA, AND RAMIL, JJ.

OPINION OF THE COURT BY LEVISON, J.

The defendant-appellant Kenneth S.G. Lee, acting pro se, appeals from his conviction of and sentence for one count of operation without no-fault insurance, in violation of Hawaii Revised Statutes (HRS) Sec. 431:10C-104 (1993 & Supp. 1996).[1] On

---

[1] As of August 4, 1997, the date of Lee's alleged violation of HRS Sec. 431:10C-104, that statute provided:

Conditions of operation and registration of motor vehicles. (a) Except as provided in section 431:10c-105, no person shall operate or use a motor vehicle upon any public street , road, or highway of this State at any time unless such motor vehicle is insured at all times under a no fault policy.

(b) Every owner of a motor vehicle used or operated at any time upon any public street, road, or highway of this State shall obtain a no-fault policy

appeal, he argues that the district court erred because: (1) there was insufficient evidence adduced that (a) the vehicle was uninsured, (b) Lee was the owner of the vehicle, and (c) Lee possessed the requisite state of mind at the time of the alleged violation; (2) it failed to comply with the procedural requirements of HRS Sec. 805-13 (b) (1993);[2] and (3) HRS ch. 431 is unenforceable against Lee, inasmuch as it violates article III of the 1840 Constitution of the Kingdom of Hawaii. Lee's arguments are without merit. Accordingly, we affirm the district court's judgment, conviction, and sentence.

I. BACKGROUND

---

upon such vehicle which provides the coverage required by this article and shall maintain the no-fault policy at all times for the entire motor vehicle registration period.

(c) Any person who violates the provisions of this section shall be subject to the provisions of section 431:10C-117 (a).

(d) The provisions of this article shall not apply to any vehicle owned by or registered in the name of any agency of the federal government, or to any antique motor vehicle as defined in section 249-1.

The section was amended, effective January 1, 1998, in respects immaterial to the present appeal. See 1997 Haw. Sess. L. Act 251, Secs. 14 and 70 at 525, 553 (replacing the phrase "no-fault policy," as employed in subsections (a) and (b), with the phrase "motor vehicle policy").

[2] At the time of Lee's alleged violation of HRS Sec. 431:10C-104, HRS Sec. 805-13(b) provided in relevant part that,

> [i]n all cases of citation for alleged violations of chapter 294 or section 286-116, the court shall require the appearance of the driver cited and the registered owner of the motor vehicle. If the register owner is not the driver, the registered owner shall be cited by service of the citation on the driver who shall be deemed to be the owner's agent for purposes of service and by naming the owner jointly with the driver in the citation . . . .

(Indentation omitted.) HRS Sec. 805-13 was amended, effective January 1, 1998, to replace the references to "chapter 294" with "chapter 431:10c." See 1997 Haw. Sess. L. Act 251, Secs. 56 and 70 at 550, 553. Although the legislative history is silent regarding the purpose for the change, the amendment appears merely to have codified an existing appellate interpretation that the section was meant to apply to chapter 294's successor, chapter 431:10C, following the repeal of the former chapter and enactment of the latter as a replacement. See State v. Shamp, 86 Haw. 331, 339-40 949 P.2d 171, 179-81 (App. 1997)

On November 10, 1997, Lee was tried for one count of operation without no-fault insurance, in violation of HRS Sec. 431:10C-104, in the district court of the third circuit, Hilo division. At trial, the prosecution's evidence consisted entirely of the testimony of Hawaii County Police Department Officer Christopher Gali. Officer Gali identified Lee and testified that he had "stop[ped] a vehicle by a person who became known to [him] as Kenneth S. Lee" on August 4, 1997, in South Hilo. The remainder of officer Gali's testimony was a follows:

> Q. . . . [W]hen you stopped that person[,] did you ask him for identification?
>
> A. Yes.
>
> Q. And did he produce identification?
>
> A. Yes, his drivers license.
>
> Q. And did you ask him for an insurance card?
>
> A. Yes, I did.
>
> Q. And was he able to produce the insurance card?
>
> A. No.
>
> Q. What was the circumstance of that conversation, if any?
>
> A. Basically, I stopped him for registration and safety check being expired, at which time I asked him for his insurance card. He said he didn't have one. And then I proceeded to issue him citations.
>
> Q. And that's the extent of your contact with him on that day?
>
> A. Yes.

Lee proceeded pro se at trial. In his case-in-chief, Lee was sworn in as a witness, but, instead of proffering testimony regarding the events surrounding the alleged violation, he advanced legal argument regarding the "validity of the State no-fault law as now applied to native Hawaiians." Lee argued, inter alia, that HRS Sec. 431:10C-104 was invalid pursuant to (1) the "Native Hawaiian Declaration of 1839," (2) article III of the 1840 Constitution of the Kingdom of Hawaii, and (3) United States Public Law 103-150,

107 Stat. 1510 (1993) (Congress' Joint Resolution "apologiz[ing] to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893[.]"). The district court discussed Lee's arguments with him at length on the record, rejected them, and then found him guilty as charged. The district court sentenced Lee to seventy-five hours of community service, but stayed imposition of the sentence pending the filing of a notice of appeal. The district court's judgment was entered the same day.

On November 19, 1997, Lee filed a "Motion for Reconsideration or Motion for New Trial." In his "Declaration" in support of the motion, Lee essentially reiterated his trial arguments. On the line denominated paragraph five of his declaration, Lee stated: "I cannot transfer the ownership of my car until I have a current safety check. I don't want to buy no-fault insurance. Now[,] I have a no-fault ticket." On December 5, 1997, Lee filed an "Additional Declaration in Support Of Motion for Reconsideration or Motion for New Trial." The "additional declaration" contained more citations relevant to this argument with respect to the Constitution of 1840, as well as the following "clarification":

> I have to clarify paragraph 5 in my first Declaration. When I say transfer the ownership of my car [,] I mean to my name. I cannot buy no-fault insurance until the car is in my name. After the trial I did call AARP and they only insure if the car is already insured. I think this is oppressive. I also somehow forgot to mention how I got the ticket. After the officer stopped me, he called to check ownership and I heard the lady on the radio say "Hawaii Motors" and that is correct. The officer then gave me a ticket.

A hearing was held on Lee's motions on December 5, 1997. Lee reiterated his legal arguments and also asserted that the evidence had been insufficient to support his conviction. Lee's "clarification" of "paragraph 5" of his initial declaration unfolded as follows:

> THE DEFENDANT: . . . [T]he car is registered -- is owned by Hawaiian Motors, and I

believe it's that officer's duty to prove that it doesn't have insurance.

THE COURT: . . .If the registered owner of the vehicle was somebody else, in light since [sic] . . . your case came up

[THE PROSECUTION:] -- [T]here's a subsequent --

THE COURT: -- there has been a decision by the, uh --

[THE PROSECUTION:] -- ICA--

THE COURT: -- Intermediate Court of Appeals, appellate court. You've got two appellate courts: Supreme Court and Intermediate Court of Appeals that says [sic] that if you have a vehicle that is being driven by somebody that is owned by somebody else, that . . . you're actually supposed to cite both -- both of you. You're supposed to cite the owner and the guy who was driving it and maybe -- it's kind of a long story -- but maybe the person who is driving it should not be ticketed or should be found not guilty on a good faith defense. But not the -- registered owner in the sense of . . . like if you buy your vehicle and the registered owner is the bank because you still owe money on the car, I'm pretty sure that that's not what they are talking about.

[THE PROSECUTION:] Or failure to transfer.

THE COURT: Now, if you . . . were to come in and say I can prove that the registered owner of the vehicle was your friend over there, then maybe he's supposed to pay the ticket, not you. In light of that decision, then maybe you would have something. But not where the other owner is . . . the lending institution.

The district court orally denied Lee's motions at the conclusion of the hearing, indication that it "[did]n't plan to write a written decision."

Lee's timely appeal of the district court's judgment was filed on December 9, 1997.

II. STANDARDS OF REVIEW

A. Sufficiency Of The Evidence

> "[Judgments] based on conflicting evidence will not be set aside where there is substantial evidence to support the [trier of fact's] findings." Tsugawa v. Reinartz, 56 Haw. 67, 71, 527 P.2d 1278, 1282 (1974). We have defined "substantial evidence" as "credible evidence which is of sufficient quality and probative value to enable a [person] of reasonable caution to support a conclusion." See, e.g., In re Doe, Born on January 5, 1976, 76 Hawaii 85, 93, 869 P.2d 1304, 1312 (1994) (citations omitted) (brackets in original).
>
> Aga v. Hundahl, 78 Hawaii 230, 237, 891 P.2d 1022, 1029 (1995). "[I]t is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witness and weight of the evidence; this is the province of the [trier of fact]." State v. Buch, 83 Hawaii 308, 321, 926 P.2d 599, 612 (1996) (citation omitted). "We have long held that evidence adduced in the trial court must be considered in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support a conviction." State v. Batson, 73 Haw. 236, 248, 831P.2d 924, 931 (1992), reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992) (citations omitted).

State v. Bautista, 86 Hawaii 207, 210, 948 P. 2d 1048, 1051 (1997) (some brackets in original and some added).

B. Plain Error

> "We may recognize plain error when the error committed affects substantial rights of the defendants." State v. Cullen, 86 Hawaii 1, 8, 946 P.2d 955, 962 (1997) (citations and internal quotation signals omitted). ("Plain error or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

State v. Davia, 87 Hawaii 249, 253, 953 P. 2d 1347, 1351 (1998).

C. Motion For A New Trial

"'As a general matter, the granting or denial of a motion for a new trial is within the sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion occurs if the trial court has clearly exceeded the bounds of reason or has disregarded rules or principles of law or practice to the substantial detriment of a party litigant." Roxas v. marcos, No. 20606, slip op. at 42-43 (Haw. Nov. 17, 1998) (quoting Davia, 87 Hawaii at 253, 953 P.2d at 1351 (citations and internal quotation signals omitted)).

D. Conclusions of Law

> We review the trial court's [conclusions of law] de novo under the right/wrong standard. Raines v. State, 79 Hawaii 219, 222, 900 P.2d 1286, 1289 (1995). "Under this... standard, we examine the facts and answer the question without being required to give any weight to the trial court's answer to it." State v. Miller, 4 Haw. App. 603, 606, 671 P.2d 1037, 1040 (1983). See also Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 119, 839 P.2d 10, 28, reconsideration denied, 74 Haw. 650, 843 P.2d 144 (1992). Thus, a [conclusion of law] "is not binding upon the appellate court and is freely reviewable for its correctness." State v. Bowe, 77 Hawaii 51, 53, 881 P.2d 538, 540 (1994) (citation omitted).

Roxas, slip op. at 43 (quoting State v. Kane, 87 Hawaii 71, 74, 951 P.2d 934, 937 (1998) (quoting Aickin v. Ocean View Inv. Co., 84 Hawaii 447, 453, 935 P.2d 992, 998 (1997)) (brackets in original)).

III. DISCUSSION

A. The Evidence Was Sufficient To Support Lee's Conviction.

1. The evidence was sufficient to establish that Lee and the vehicle were uninsured.

Lee first argues that the district court erred in (1) convicting him of a violation of HRS Sec. 431:10C-104, and (2) denying his motion for a new trial,[3] inasmuch as the prosecution failed to prove that the vehicle he drove was uninsured. However, as noted above, officer Gali testified that Lee failed to produce an insurance card and admitted that he did not have one. Those facts, in and of themselves, were sufficient to establish that Lee and the vehicle were uninsured.

HRS Sec. 431:10c-107 (1993) provides in relevant part that "[e]very insurer shall issue to its insureds a no-fault insurance identification card for each motor vehicle for which the basic no-fault coverage is written" and that the "identification card shall be in the insured motor vehicle at all times and shall be exhibited to a law enforcement officer upon demand." The legislative history underlying HRS Sec. 431:10c-107 indicates that the statute was enacted for the purpose of simplifying the prosecution's task of proving non-compliance with HRS Sec. 431:10C-104. See Sen. Stand. Comm. Rep. No. 584-78, in 1978 Senate Journal, at 1012 (noting that (1) "[t]he purpose of this bill is to place law enforcement officers and the courts of the State in an effective statutory position to enforce the compulsory insurance requirements of the Hawaii No-Fault Law in order to protect the public as intended by law," (2) "prior law [did] not specifically authorize police officers to demand production of proof of insurance from a motorist and [did] not require a motorist to present proof upon

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[3] We note that the Hawaii Rules of Penal Procedure do not provide for a "motion for reconsideration" of a guilty verdict.

demand," and (3) the proposed act would "provide [ ] the necessary teeth to the no-fault law enforcement provisions"); Sen. Stand. Comm. Rep. No. 671-78, in 1978 Senate Journal, at 1059 (same); Hse. Stand. Comm. Rep. No. 544-78, in 1978 House Journal, at 1663 (noting that "[t]he purpose of this bill is to strengthen the enforcement provisions of the compulsory insurance requirements of the Hawaii No- Fault Law"). Thus, it appears that it was the legislature's intent that the trier of fact might infer from the inability to produce an insurance identification card that there was no no-fault insurance coverage of the vehicle or the driver. Inasmuch as the district court appears to have drawn such an inference in this case, we cannot say there was no substantial evidence to support the district court's implied finding of fact.

In support of his argument, Lee also quotes the following characterization of the elements of HRS Sec. 431:10C-104 from the Intermediate Court of Appeals' (ICA) opinion in State v. Shamp, 86 Hawaii 331, 949 P.2d 171 (App. 1997) :

> . . . [T]he three elements that the State must prove beyond a reasonable doubt, in order to convict a driver who is not the owner of the vehicle, [4] are, pursuant to HRS Sec. 431:10C-104(a): (1) the vehicle was being driven on a "public street road or highway of this State";(2) **the vehicle was not insured by** no-fault insurance or **some form of bond, surety or self-insurance**; and (3) pursuant to HRS Sec. 702-204, relevant case law and legislative history, the driver acted with the requisite state of mind.

(Emphasis in original indicated by underlined text and added emphasis indicated in bold face.) Although Lee does not clearly raise the issue, we note that the Shamp court's iteration of the elements of HRS Sec. 431:10C-104(a) implies that the prosecution bears the burden of disproving that a vehicle or driver is self-insured. In the present case, the prosecution offered no evidence that the vehicle or Lee were not self-insured. If the Shamp construction is correct – i.e., if the absence of self-insurance constitutes "conduct" or "attendant circumstances" "specified by

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[4] Lee's claim that he was not the owner of the vehicle he was driving is discussed infra section III.B.

the definition of the offense," pursuant to HRS Sec. 702-205 (1993), rather than a "defense," pursuant to HRS Sec. 701-115 (1993) -- then the prosecution's omission in this regard would rise to the level of plain error. C.f. State v. Hirayasu, 71 Haw. 587, 589-90, 801 p.2d 25, 26 (1990) (reversing a conviction for plain error due to insufficiency of the evidence); Shamp, 86 Hawaii at 334, 949 P.2d at 174 (holding that the prosecution's failure to prove the defendant's state of mind constituted plain error). However, because we hold, contrary to the view implied in Shamp, that proof of self-insurance is a "defense," within the meaning of HRS Sec. 701-115, we perceive no error.

HRS Sec. 431:10C-104(a), which defines the offense of operation without no-fault insurance, indicated in relevant part that its requirements apply "[e]xcept as provided in section 431:10C-105." See supra note 1. At the time of Lee's alleged violation of HRS Sec. 431:10C-104, HRS Sec. 431:10C-105 (1993) provided:

> **Self-insurance.** The motor vehicle insurance required section 431:10C-104 may be satisfied by any owner of a motor vehicle if:
>
> (1) Such owner provides a surety bond, proof of qualifications as a self insurer or other securities affording security substantially equivalent to that afforded under a no-fault policy, providing coverage at all time for the entire motor vehicle registration period, as determined and approved by the commissioner under regulations; and
>
> (2) The commissioner is satisfied that in case of injury, death or property damage, any claimant would have had if a no-fault policy had been applicable to such vehicle.[5]

Accordingly, even assuming that Lee did not have a no-fault policy pursuant to HRS Sec. 431:10C-104(a), if either he or the vehicle were self-insured, then he would not be guilty of the

[5] Since the time of Lee's alleged violation of HRS Sec. 431:10C-104, HRS Sec. 431:10C-105 has been amended once, in immaterial respects. See 1997 Haw. Sess. L. Act 251, Secs. 16 and 70 at 526, 553 (replacing the phrase "no-fault policy," as set forth in subsections (1) and (2), with the phrase "motor vehicle insurance policy").

charge. The question, then, is whether Lee or the prosecution bore the burden of production on the issue.

HRS Sec. 702-205 (1993) provides:

> **Elements of an offense.** The elements of an offense are such (1) conduct, (2) attendant circumstances, and (3) results of conduct, as:
> (a) Are specified by the definition of the offense, and
> (b) Negative a defense (other than a defense based on the statute of limitations, lack of venue, or lack of jurisdiction).

HRS Sec. 701-114 (1993) provides in relevant part that, "[e]xcept as otherwise provided in section 701-115, no person may be convicted of an offense unless the following [is] proved beyond a reasonable doubt: . . . [e]ach element of the offense." HRS Sec. 701-115 (1993) provides:

> **Defenses.** (1) A defense is a fact or set of facts which negatives penal liability.
> (2) No defense may be considered by the trier of fact unless evidence of the specified facts has been presented. If such evidence is presented, then:
> (a) I n defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in the light of any contrary prosecution evidence, raises a reasonable doubt as to the defendant's guilt; or
> (b) If the defense is an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in the light of any contrary prosecution evidence, proves by a preponderance of the evidence the specified fact or facts which negative penal liability.
> (3) A defense is an affirmative defense if :
> (a) It is specifically so designated by the Code or another statute; or

(b) If the Code or another statute plainly requires the defendant to prove the defense by a preponderance of the evidence.

(Emphases added.)

If self-insurance is "a fact or set of facts which negatives penal liability" (i.e., a "defense"), rather than "conduct," "attendant circumstances," or "results of conduct" "specified by the definition of the offense," see HRS Sec. 702-205, supra, then the prosecution need not disprove self-insurance if no evidence of it is offered by either side. In other words, if self-insurance is a defense, the defendant bears the initial burden of production on the issue. C.f. State v. Bolosan, 78 Hawaii 86, 89, 890 P.2d 673, 676 (1995) (holding that lack of knowledge that borrowed car is uninsured is a "defense" to HRS Sec. 431:10C-104 and need not be disproved if the evidence does not raise it).

As noted above, Shamp contains language suggesting that self-insured is "conduct," "attendant circumstances," or "results of conduct," rather than a defense, for the purpose of HRS Sec. 431:10C-104. However, the decision is devoid of any explanation of its suggestion in that regard. Although the appellate courts of this state have never directly addressed the question elsewhere, several decisions have hinted at a position conflicting with Shamp. In State v. Kahaunaele, 10 Haw. App. 519, 879 P.2d 566 (1994), overruled on other grounds by Bolosan, 78 Hawaii at 91 n.9, 890 P.2d at 678 n.9, the Intermediate Court of Appeals (ICA) addressed seven consolidated appeals of defendants convicted of violations of HRS Sec. 431:10C-104, all of whom have borrowed vehicles that were not properly insured. It appears from the facts cited by the Kahaunaele court that no evidence of self-insurance had been raised in any of the consolidated cases. See Kahaunaele, 10 Haw. App. at 521-22, 879 P.2d at 567-68. In its discussion, the Kahaunaele court quoted HRS Sec. 431:10C-104(a), but omitted the initial phrase "[e]xcept as provided in section 431:10C-105," id. at 524, 879 P.2d at 568, and, accordingly, did not address the self-insurance exception. Similarly, in Bolosan, a case in which the defendant had borrowed a vehicle that was, apparently, uninsured, 78 Hawaii at 87, 890 P.2d at 674, this court's factual recitation made no mention of evidence regarding self-insurance, and we therefore did no address the issue. Inasmuch as no evidence of

self-insurance was adduced at trial in either case, the Bolosan and Kahaunaele courts appear to have assumed that self-insurance is a defense to, rather than an "element" of, operation without no-fault insurance.

In State v. Nobriga, 10 Haw. App. 353, 873 P.2d 110 (1994), overruled on other grounds by State v. maelega, 80 Hawaii 172, 178-79, 907 P.2d 758, 764-65 (1995),[6] the ICA set forth a framework for determining whether an "exception" is a "defense" to or an "element" of an offense:

> The general and well-settled common law rule is that where an exception is embodied in the language of the enacting clause of a criminal statute, [[7]] and therefore appears to be an integral part of the verbal description of the offense, the burden is on the prosecution to negative that exception, prima facie, as part of its main case. Annotation, Burden of Averment and Proof As to Exception in Criminal Statute on Which the Prosecution Is Based, 153 A.L.R. 1218, 1226 (1944); 1 Wharton's Criminal Evidence Sec. 20, at 35 (C. Torcia 13th ed. 1972).

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[6] In Maelega, this court took issue with characterization in Nobriga of the defendant's burden, pursuant to HRS Sec. 701-115, "to come forward with some credible evidence of facts constituting the defense" and explained, instead, that the defendant's burden was merely to come forward with some evidence, "no matter how weak, inconclusive, or unsatisfactory the evidence may be." Maelega, 80 Hawaii at 176, 179, 907 P.2d at 762,765 (quoting Nobriga, 10 Haw. App. at 359, 873 P.2d at 113 (citing Commentary to HRS Sec 701-115 (1985)) (emphasis in original), and State v. Pinero, 75 Haw 282, 304, 859 P.2d 1369, 1379 (1993) (citations and internal quotation marks omitted)) (emphasis in original).

> [7] In criminal nomenclature, the term "enacting clause" has long been applied to the prohibitory declaration of the statute which contains the general or preliminary description of the acts prohibited; i.e., the clause which proscribes the offensive deed. Annotation, Burden of Averment and proof as to Exception in Criminal Statute on Which the Prosecution Is Based, 153 A.L.R. 1218, 1226 (1944).

> ...[W]hen the exception appears somewhere other than in the enacting clause, and is thus a distinct substantive exception or proviso, the burden is on the defendant to bring forward evidence of exceptive facts that constitute a defense. Annotation, 153 A.L.R. at 1277-78; 1 Wharton's Criminal Evidence Sec. 20, at 35. The prosecutor is not required in such instance to negative, by proof in advance, exceptions not found in the enacting clause. 1 Wharton's Criminal Evidence Sec. 20, at 33-44.

Nobriga, 10 Haw. App. at 358, 873 P.2d at 112-13.

HRS Sec. 431:10C-104(a) refers to the provisions regarding self-insurance in HRS 431:10C-105, but those provisions are not themselves located within the enacting clause of the offense of operation without no-fault insurance. Prior to the enactment of HRS ch. 431, the provisions of HRS Secs. 431:10C-104 and 431:10C-105 were included as subparts (a) (1) and (a) (2), respectively, of the former HRS Sec. 294-8.[8] Specifically, the

[8] HRS Sec. 294-8 (1985) provided

> **Conditions of operation and registration.** (a) (1) No person shall operate or use a motor vehicle upon any public street, road, or highway of this State at any time unless such motor vehicle is insured at all times under a no-fault policy. Every owner of a motor vehicle used or operated at any time upon any public street, road, or highway of this State shall obtain a no-fault policy upon such vehicle which provides the coverage required by this article and shall maintain the no-fault policy at all times for the entire motor vehicle registration period. (2) The requirements of this subsection may be satisfied by any owner of a motor vehicle if:
>
> (A) Such owner provides a surety bond, proof of qualifications as a self insurer, or other securities affording security substantially equivalent to that afforded under a no-fault policy, providing coverage at all time for the entire motor vehicle registration period, as determined and approved by the commissioner under regulations, and
>
> (B) The commissioner is satisfied that in case of injury or death or property damage, any claimant would have the same rights against such owner as the claimant would have had if a no-fault policy had been applicable to such vehicle.

self-insurance exception did not appear in HRS Sec. 294-8 (a) (1), the "enacting clause" defining the crime of operation without no-fault insurance, but rather in HRS Sec 294-8(a) (2). See supra note 8. When it repealed HRS ch 294 and reorganized and reenacted the majority of its provisions in HRS ch. 431, the legislature expressly declared, in HRS Sec. 431:1-100.5, that the purpose of the new chapter was "to recodify, without substantive change, the insurance law in effect immediately prior to July 1, 1988." Thus, we are unable to discern any legislative intent to alter the defendant's burden of production regarding self-insurance by virtue of the foregoing statutory reorganization. Moreover, interpreting HRS Secs 431:10C-104 and 431:10C-105 to require the prosecution to disprove self-insurance in every case would defeat the declared purpose of HRS Sec. 431:10C-107, discussed above, by increasing the difficulty of proving lack of coverage. Inasmuch as self-insurance is likely to be quire rare, it would be absurd to require the prosecution to disprove it in every case.

> "[O]ur foremost obligation [when interpreting a statute] is to ascertain and give effect to the intention of the legislature, which is obtained primarily from the language contained in the statute itself." State v. Aluli, 78 Hawaii 317, 320, 893 P.2d 168, 171 (1995) (citation omitted).... "The legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction[,] and illogical." State v. Arceo, 84 Hawaii 1. 19, 928 P.2d 843, 861 (1996) (citation and internal quotation marks omitted).

Bautista, 86 Hawaii at 209, 948 P.2d at 1050-51. Accordingly, self-insurance should be considered a defense,[9] which the

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[9] Self-insurance is not expressly designated in HRS Sec 431:10C-105 or elsewhere as an affirmative defense, and the statute gives no indication that the legislature intended it to be one. Therefore, it is not an affirmative defense pursuant to HRS Sec. 701-115(3). Cf. Bolosan, 78 Hawaii at 89 & n.7, 890 P.2d

prosecution need not disprove unless some evidence to support the defense has been introduced.[10] To the extent that Shamp holds to the contrary, it is here by overruled.

We therefore hold (1) that the prosecution adduced substantial evidence that neither Lee nor the vehicle he was operating were insured pursuant to a no-fault policy and (2) that it was not subject to the burden of disproving the defense of self-insurance.

2. The prosecution was not required to prove that Lee was the owner of the vehicle or otherwise to identify the registered owner.

Lee next argues that the prosecution failed to prove that he was the owner of the vehicle or to otherwise identify the registered owner. He notes that the "[e]vidence presented by the state show [Lee] to be a vehicle operation and no more[.]" Granted, HRS Sec. 431:10C-104(b) provides in relevant part that "[e]very owner of a motor vehicle used or operated at any time upon any public street, road or highway of the State shall obtain...and...maintain [a] no-fault policy at all times[.]" (Emphasis added.) Thus, that subsection applies exclusively to vehicle owners, whether or not they are personally operating the vehicle at the time the statutory offense is committed. However, HRS Sec. 431:10C-104(a) does not apply exclusively to vehicle owners. That subsection provides in relevant part that "no person shall operate or use a motor vehicle...unless such motor vehicle is insured at all times under a no-fault policy[.]" (Emphasis added.) In other words, one may violate HRS Sec. 431:10C-104 in two ways: (a) by operating or using a vehicle without no-fault insurance; or (b) by owning a vehicle that is "used or operated at any time upon any public street, road or highway" without maintaining no-fault insurance on the vehicle. Inasmuch as the prosecution made out a prima facie case

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at 676 & n.7 (holding that a borrower's lack of knowledge of a vehicle's uninsured status is not an affirmative defense).

[10] Likewise, the exceptions listed in HRS Sec. 431:10C-104(d), regarding antique automobiles and vehicles registered by the federal government, should be considered defenses to HRS Secs. 431:10C-104(a) and (b) because they are not listed in the "enacting clauses" of the offenses defined in those subsections.

of violation of HRS 431:10C-104(a), the identity of the owner of the vehicle that Lee drove was irrelevant.

3. The prosecution adduced sufficient evidence of the requisite state of mind.

Lee next argues that the prosecution failed to prove that he possessed the requisite state of mind to commit the offense of operation without no-fault insurance. In support of his argument, he first asserts that he was not the owner of the vehicle he operated. He cites Bolosan and Shamp, presumably for the proposition that

> [t]he borrower of a motor vehicle has a statutory right to reasonably believe that the borrowed motor vehicle is insured. Evidence that the defendant borrowed and operated upon a public street a motor vehicle that was not insured under a no-fault policy is sufficient evidence to sustain [the lack of knowledge defense].

Bolosan, 78 Hawaii at 91 n.9, 890 P.2d 678 n.9 (construing the "good faith lack of knowledge defense" codified in HRS Sec. 431:10C-117[11] (quoting Kahaunaele, 10 Haw. App. at 531, 879 P.2d at 571)) (brackets in original). See also Shamp, 86 Hawaii at 338, 949 P.2d at 178 (following Bolosan).

As noted supra in section I, no evidence regarding the ownership of the vehicle was adduced at trial. Lee apparently attempted to adduce such evidence by way of his two "declarations," which he submitted in support of his "Motion for Reconsideration or Motion for New Trial." Of course, his declarations, as out-of-court statements, constituted hearsay and

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[11] At the time of this court's opinion in Bolosan, HRS Sec 431:10C-117(3) (1993) provided in relevant part:

> [A]ny person cited under this section shall have an opportunity to present a good faith defense, including but not limited to lack of knowledge or proof of insurance. The general penalty provision of this section shall not apply to: ...
>
> (C) Any operator of a borrowed motor vehicle if the operator holds a reasonable belief that the subject vehicle is insured.

were therefore inadmissible as evidence. See Hawaii Rules of Evidence (HRE) Rules 801(3) (defining hearsay) and 802 (providing that hearsay is generally inadmissible) (1993). In any case, Lee's "declarations," proffered post-trial as they were, could not alter the sufficiency of the prosecution's evidence at trial one way or the other.

Lee suggests, without explaining his reasoning, that, where it is unclear whether a driver is the registered owner of a vehicle, the presumption should be that he or she is not the owner. In fact, inasmuch as a good faith lack of knowledge regarding the insured status of a borrowed vehicle is a defense pursuant to HRS Sec. 701-115. see Bolosan, 78 Hawaii at 89, 890 P.2d at 676, Lee bore the burden of production with respect to it, and no evidence was adduced at trial that he had borrowed a vehicle owned by another. See supra section III.A.1. Accordingly, Lee cannot rely upon the borrower's "good faith lack of knowledge" defense.

In State v. Lesher, 66 Haw. 534, 669 P.2d 146 (1983), this court held that, pursuant to HRS Sec.702-204,[12] the state of mind required for a violation of HRS sec. 294-8(a) (1) (the predecessor of HRS Sec. 431:10C-104, as noted above) is intent, knowledge, or recklessness.

> [G]iven the difficulty of proving the requisite state of mind by direct evidence in criminal cases, "[w]e have consistently held that...proof by circumstantial evidence and reasonable inferences arising from circumstances surrounding the [defendant's conduct] is sufficient... Thus, the mind of an alleged offender may be read from his acts, conduct and inferences fairly drawn from all the circumstances." State v. Sadine, 64 Haw. 427, 430, 642 P.2d 534, 536-37 (1982) (citations omitted); see also State v. Simpson, 64 Haw. 363, 373 n.7, 641 P.2d 320, 326 n.7 (1982)

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12 HRS Sec. 702-204 (1993) provides in relevant part that "[w]hen the state of mind required to establish an element of an offense is not edified by law, that element is established if, with respect thereto, a person acts intentionally, knowingly or recklessly."

State v. Mitsuda, 86 Hawaii 37, 44, 947 P.2d 349, 356 (1996) (quoting State v. Batson, 73 Haw. 236, 254, 831 P.2d 924, 934, reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992) (footnote omitted)) (some brackets in original and some added). In the absence of any evidence implicating the "good faith borrower" defense, the district court could reasonable have inferred from the fact that Lee drove the vehicle without insurance that he did so either intentionally, knowingly, or recklessly. Accordingly, Lee's requisite state of mind was supported by substantial evidence

B. Assuming, Arguendo, That The District Court Failed To Comply With The Requirements Of HRS Sec. 805-13, Lee's Conviction Was Nevertheless Valid

Lee urges that his conviction must be reversed because the district court failed to comply with the requirements of HRS Sec. 805-13(b). During the period applicable to this case, HRS Sec. 805-13(b) provided in relevant part that, "[i]n all cases of alleged violations" of the no-fault insurance laws, "the court shall require the appearance of the driver cited and the registered owner of the vehicle." See supra note 2 (emphases added). The subsection further provided that, "[i]f the registered owner is not the driver, the registered owner shall be cited by service of the citation on the driver who shall be deemed the owner's agent for purposes of service and by naming the owner jointly with the driver in the citation."

Assuming, arguendo, that Lee was not the registered owner of the vehicle he was driving, the district court's failure to comply with HRS Sec. 805-13 would not constitute a basis for reversing Lee's conviction. In support of his argument to the contrary, Lee relies, once again, upon Shamp. In Shamp, the defendant contended that his conviction of HRS Sec. 431:10C-104 was reversible based on the district court's failure to comply with HRS Sec. 805-13. 86 Hawaii at 334, 949 P.2d at 174. The Shamp court ruled that "[w]e need not address this issue because we hold that the State failed to prove one of the three necessary elements of an HRS Sec. 431:10C-104 violation [--the state of mind of the vehicle operator--], and, therefore, the district court committed plain error in convicting [the d]efendant." Id. Nevertheless, the Shamp court discussed the point of error implicating HRS Sec 805-13(b) "in

order to guide the district court, the prosecutor's office, and enforcement officers[.]" Id.

Because the district court in Shamp had failed to cause the registered owner to appear, despite evidence that the driver of the vehicle had merely borrowed it, the Shamp court held that a "prima facie procedural error" had transpired. Id. at 342, 949 P.2d at 182. The Shamp court further held that the arresting officer had erred in failing to cite the registered owner, as mandated by HRS Sec 805-13(b). Id.

The Shamp court concluded in relevant part as follows:

> We hold that the district court committed plain error when it convicted Defendant of violating HRS Sec. 431:10C-104 because the State failed to prove one of the three necessary elements of the offense. The State must prove each of the elements because, otherwise, a serious miscarriage of justice may occur: The wrong defendant may be convicted (the proper defendant being the vehicle's registered owner). We therefore reverse the district court's conviction of Defendant in regards to the HRS Sec. 431:10C-104 violation. We further conclude that the district court erred when it failed to require the owner of the vehicle to appear in court, pursuant to HRS Sec. 805-13. Section 805-13 properly applies to chapter 431:10C violations, in particular HRS Sec. 431:10C-104.
>
> ...Enforcing the requirement that the registered owner appear in court will ... help the district court and the State to determine who the true violator of the statutes; the vehicle's registered owner, or, additionally, the vehicle's drive. We therefore strongly encourage prosecutors, the district court, and enforcement officers to follow the procedures set forth in HRS Sec. 805-13(b)

Id. at 343, 949 P.2d at 183 (emphasis added).

Lee seizes on the first of the phrases highlighted above, arguing that HRS Sec. 805-13(b) must be followed in order for the district court to determine who the "proper defendant" is. However,

as the Shamp court observed in the second of the highlighted phrases, it is clear from the structure of HRS Sec 431:10c-104(b) that the "proper defendant" may be either a vehicle's owner, see HRS Sec. 431:10C-104(b), or its operator, see HRS Sec. 431:10C-104(a), or both. See also supra section IH.A.2. As the Shamp court further observed, the legislature's stated purpose underlying the bill that enacted HRS Sec. 805-13 was to "provide [] the necessary teeth to the no-fault enforcement provision[] and ... reduce the uninsured motorist population." 86 Hawaii at 430-41, 949 P.2d at 180-81 (quoting Sen. Stand. Comm. Rep. No. 671-78, in 1978 Senate Journal, at 1060; Hse. Stand. comm. Rep. No. 544-78, in 1978 House Journal, at 1634). See also supra section III.A.2, it would violate the spirit of the legislation to hold that the owner's absence constitutes a basis for overturning the operator's conviction. Although, as the ICA did in Shamp, we "encourage prosecutors, the district courts, and enforcement officers to follow the procedures set forth in HRS Sec 805-13(b)," we hold that a violation of those procedures is not reversible error with respect to the conviction of an operator of an uninsured vehicle.

C. The 1804 Constitution Of The Kingdom Of Hawaii No Longer Governs The Hawaii State Legislature.

Lee's final argument is that HRS ch. 413 violates article III of the 1840 Constitution of the Kingdom of Hawaii, which, he asserts, remains in force through the provisions of HRS Sec. 1-1 (1993). The 1840 Constitution was Hawaii's first written constitution. Anne Feder Lee, The Hawaii State Constitution, 2-3 (1993) [hereinafter, Lee]. New constitutions were adopted three times during the monarchy -- in 1852, 1864 and 1887. Id. at 3-4. As Lee himself concedes in his opening brief, the Republic of Hawaii, after overthrowing the monarchy, enacted the Constitution of 1894, which expressly abrogated all prior constitutions. See Haw. Const. of 1894 art. 91 ("This Constitution[,] when promulgated, shall thereupon become the Supreme Law of the Republic, and the Constitution promulgated on the 7th day of July, 1887, and all other constitutions at any time the Supreme Law in the Hawaiian Islands,... are hereby expressly abrogated and declared to be null and void."). Pursuant to the Organic Act, the United State annexed Hawaii as a territory, expressly repealing the

"constitution of the Republic of Hawaii" and substituting its own fundamental law. See Organic Act Secs. 3, 7; Act of April 30, 1900, c. 339, 31 Stat. 141, 157, reprinted in 1 HRS 43, 47 (1993) (as amended). Hawaii's state constitution became effective in 1959, when Hawaii was admitted into the Union as a state. Lee at 7-10. Section 3 of The Admission Act, Act of March 18, 1959, Pub. L. 86-3, 73 Stat 4, reprinted in 1 HRS 90 (1993), providing "for the admission of the State of Hawaii into the Union," mandated that "[t]he constitution of the State of Hawaii shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence." The Hawaii Constitution has been amended several times, most notable as a result of the constitutional conventions of 1968 and 1978. Lee at 11-20.

It is elementary that

> [w]hen...a[new] Constitution takes effect, it is a new departure in the government of the country, inasmuch as it states anew the principles upon which the government is to be administered, and rearranges the distributions and limitations of sovereign powers. What is not changed is reaffirmed. The new statement of the fundamental law takes the place of the old

Ahlo v. Smith , 8 Haw. 420, 423 (1892) (holding that the requirements for voting rights provided for in the Constitution of 1864 had been abrogated by the new requirements of the Constitution of 1887). In other words, successive constitutions are consecutive rather than concurrent or cumulative, unless they expressly provide otherwise.

Although the ICA has suggested that it is an open legal question whether the "Kingdom of Hawaii" still exists, see State v. Lorenzo, 77 Hawaii 219, 883 P.2d 641 (App. 1994), and State v. French, 77 Hawaii 222, 883 P.2d 644 (App. 1994), it is clear that the various constitutions of the kingdom do not bind the current government of the state of Hawaii.

Lee's argument that HRS Sec. 1-1 somehow reenacted the 1840 Constitution is specious. That section provides:

> **Common law of the State; exceptions.** The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States of the State.

HRS Sec. 1-1 acknowledges laws "established by Hawaiian usage"; however, the phrase is employed only in the context of the proposition what "Hawaiian usage," among other authorities, may trump rules imported from the "common law of England." HRS Sec. 1-1 does not (as, indeed, it cannot) establish the supremacy of the 1840 Constitution over the current state constitution, or somehow render the documents concurrent.

Accordingly, regardless of whether the no-fault laws might have offended the provisions of the 1840 constitution, Lee's argument fails.

IV. CONCLUSION

Based on the fore going reasoning, we affirm the district court's judgment, conviction, and sentence.

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